



August 22, 2005

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: MM Docket No. 99-25

Dear Ms. Dortch:

These comments are submitted by WFCR(FM), Amherst, Massachusetts, a public radio station licensed to the University of Massachusetts, in response to the Second Order on Reconsideration and Further Notice of Proposed Rulemaking (the “Notice”) in MM Docket No. 99-25. Our comments are primarily intended to address certain questions raised in the Notice as they apply to public radio stations.

WFCR is located in Western Massachusetts, and is constructing five translator stations to reach the westernmost county of our state. People living there can hear a public radio station from neighboring New York State but not one from their own state, for distance and terrain limit the reach and quality of our main signal. More importantly, the programming on the New York station and on WFCR is very different — although there is some overlap, WFCR carries hours of classical music and jazz that listeners cannot get from any other station. But soon they will be able to hear, through translators, either for the first time or the first time with listenable quality, WFCR’s eleven hours a day of locally-produced music programs, the news reports of a staff of six local reporters, and a weekly Latino program.

All five translator stations will receive the off-air signal of our primary station, and we expect them to collectively reach a population of 98,600 people. The eight towns and cities the translators will cover range in size from 2300 to 45,800 people, none large enough to support a full-power public radio station on its own — and in any case no frequency for one is available in the region. Translator stations are the only way that WFCR’s unique programming is going to be available to these listeners. As soon as word started to spread about our plans — informally,

before we made any announcement — people came forward to express enthusiasm about our imminent arrival in their communities, which speaks to the value they place on the programming they know WFCR can provide through its translators.

1. LPFM stations should not be granted primary status over translator stations.

In the section on “Technical Rules,” under “Interference Protection Requirements,” (beginning at ¶29) the Notice asks a series of questions centering on whether LPFM stations ought to be given primary status over translator stations with regard to interference protection requirements.

Certainly LPFM stations are valuable. We support their development and have provided advice to one that recently went on the air nearby. But we urge the Commission to take into account the important — and in today’s broadcast environment, increasingly rare — programming that public radio stations like WFCR provide, in many cases through translator stations, and not take steps that would categorically weaken their ability to do so.

Granted, WFCR will not be local to the communities of its translators in the way the LPFM ownership rules require initially, but WFCR does provide local programming in a broader sense, dozens of hours produced every week. In any case, localism in the sense of “local ownership” cannot be a primary determinant for preferential status because the LPFM rules themselves allow for non-local ownership beginning two years after the first window for LPFM service opened.¹

Not all public radio programming is local in origin, of course, but neither is that required of LPFM stations. WFCR employs a sizable news staff and produces local newscasts, in-depth reports and documentaries on regional issues, and our music hosts talk about and play music related to local artists and concerts. This is generally true of public radio stations, for they are locally owned and operated in ways that most other stations these days are not. LPFM stations are not unique in providing a service of and for their communities.

¹ We submit below that non-local ownership should not be permitted at present, but that does not change the point made here for there may come a time when it is more appropriate to permit that than we believe it is now.

The best way to view this is from the perspective of the listeners themselves. It will not matter to them that they are tuned to a translator station rather than the main frequency — for them, the local translator will be WFCR just as if it were the main channel. To deprive them of that programming as a result of a new blanket rule would be a disservice.

Specifically with regard to some of the Commission's questions:

- We urge that LPFM stations not be given primary status over translators for the reasons expressed above concerning the value to listeners of the programming many can hear only on the translators of public radio stations.
- LPFM stations should not be given primary status simply because ‘LPFM stations are permitted to originate local programming.’² Neither because they are *permitted* to nor because they *do*, because public radio stations also originate local programming (local in the broader sense of the term, as above).
- Furthermore, in time, non-local applicants may operate some LPFM stations, and some owners could be far more non-local, so to speak, than a typical public radio station is from its regional translators. Interestingly, if the non-local owner did not make a certain commitment under the comparative point system, there would be no requirement to provide any locally-originated programming whatsoever, and it would seem, little incentive to do so. That certainly does not argue for preferential treatment. (Local owners, too, may not have made such a commitment through the point system.)
- Primary status should not be granted based on whether an LPFM station originates more than eight hours of programming a day, because that would unfairly overweight only one measure of local service and give existing translator stations no way to demonstrate the value of what they provide. It was reasonable to use such an easily-scored measure of service for an LPFM comparative process conducted within a pool of similarly-situated applicants, but it would not be appropriate to now use it as a measure of preference between two different services, especially if that raises it to the

² Notice at ¶33.

level of a single measurement that could deny some listeners the public radio programming they have now or could have in the future.

- If the Commission decides to give LPFM applications primary status, we urge it to grant “grandfathered” status to existing and authorized translator stations, including translators for which Construction Permits have been issued, because (1) the applications were once found grantable and there is no inherent reason why they now are not, (2) listeners should not be deprived of existing *and promised* services, and (3) it would be wrong to make such a change after time, money and effort has been invested by stations to develop translators, particularly in the case of NCE stations that have limited resources to begin with. Furthermore, NCE stations may have made commitments to donors who provided funding, and may have already spent substantial sums acquiring equipment during the Construction Permit period, as they must do in order to construct the station and apply for a license.
- In general, activities stemming from the translation application process should be allowed to continue to completion, particularly where applications were made in good faith and funds expended on them. Since we do not believe the current policy placing LPFM stations and translators on equal footing in interference situations should be changed, the overall translator process should not be changed.

In general, the Commission should not regard translator stations as being of one undifferentiated type, but rather take into account the programming of public radio. Even if some translators are to be disadvantaged, it would be wrong to lump all translators into one class and declare as a one-size-fits-all policy that they provide a lesser service.

2. Eligibility for ownership should remain restricted to local owners.

In Section 2, paragraphs 21 through 23, the Notice asks about changes to the rules of non-local ownership. We believe it is premature to allow non-local ownership of LPFM stations.

At several points in the Notice, the Commission takes note of the special nature of the organizations that apply for LPFM stations, and we suggest it should do so here as well. The Notice indicates that the Commission expected local entities to be the “first entrants” with others

to come later, but notes that not all available channels were applied for. One difficulty may have been that, not being experienced in broadcasting, some of the small non-profit organizations that might have applied were not able to organize an application rapidly enough in the first round. Some that could apply now may not even have been in existence a few years ago.

However, we can easily imagine that some of these organizations would now be able to apply for a station, having grown more familiar with the concept of LPFM over time and perhaps having been inspired by the success of LPFM stations going on the air in towns around them. And those now-experienced stations may be able to offer advice to the newcomers.

Furthermore, the ability of local organizations to provide LPFM services should be enhanced by the new rules announced for relocating transmitters and the proposals giving more time to construct a station and to lengthen the time period to file time-sharing agreements, which we generally support. That should also be a result of the proposed new transferability rules, for the reasons summarized in the Notice at ¶20. However, we suggest caution in ever allowing “the for-profit sale of an LPFM station to any entity”³ and urge limiting an acquiring entity to providing the original licensee only reimbursement for expenses incurred, for anything more could lead to the trafficking of stations or, to the extent permitted by the ownership rules, their concentration in the hands of owners with greater resources.

The Commission seeks to insure that the available LPFM frequencies are used, so it is reasonable that they not sit empty forever. But filling them up does not have to happen all at once, and that may not even be desirable. Some evolution over time may be beneficial. A second round, or even a third, may produce local applicants who were not ready in the first instance. It is not necessary to abandon the local ownership policy yet.

Respectfully submitted,

/s/ Richard Malawista
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³ This possible new rule, unlike some others, was wisely not granted an immediate waiver in the Notice at ¶20